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EQUITY IN PENNSYLVANIA.

THESIS OF

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INTRODUCTION.

In writing upon this subject I have found the task to be one of great difficulty, owing to the lack of proper materials, but still I have endeavored to do my best. I have treated the subject in three periods of time, 1st. I made a brief historical review in general; 2nd. I treated the subject in the colony of William Penn from its settlement until the Declaration of Independence; 3rd. I have taken the subject from that date to the present time, trying to show some of its peculiarities. My treatment of the subject has had to be brief as the subject has to be treated in that manner or else gone into very minutely and carefully.

EQUITY IN PENNSYLVANIA.

Before entering into a full discussion of the history of Equity in Pennsylvania, it is necessary for us to consider the meaning of the word equity. One definition of the word equity is the one given by Justinian in the Pandects, that is, "Equity is that which in human transactions is founded in natural justice, in honesty and right and which properly arises *exaequo et bono*." This definition is a very good one in a general way, it is the definition of justice or natural law & to the uninitiated is very likely a true definition. But to those who are accustomed to deal with the subject in a scientific & professional manner the definition is too broad, too general in its scope and this class has given to the word a peculiar scope and meaning.

Among the primitive races the laws that then existed were satisfactory but as the population increased and along with it the intercourse between the tribes or nations, these laws were often found not to apply to the subject matter for which they were intended and thus there arose a need of a new branch of the law which would be capable of correcting these defects by recurring to the natural principles of justice and not to a law which was intended for an entirely different state of facts.

At this point we must note a difference between equity and dispensation. When we speak of dispensation we mean a power that relieves us entirely from the obligations of the law while equity

points out the exceptions and adjusts the law to suit these exceptions. This difference is shown by the definition of equity in the modern sense, that is, "Equity is a system of jurisprudence founded on principles of right, justice, and morality as explained, settled and promulgated in the decisions of equity courts. It has the capacity of growth in the directions of its settled principles and as its system is so flexible, its doctrines may be extended to reach and cover new facts and relations."

Thus having endeavored to point out the true meaning of equity, it becomes necessary to trace its origin and development in order to better understand it. The first traces we have of Equity is the definition that, "Equity is a correction of the law whereby reason of its universality it is deficient." This the definition given by Aristotle and shows that the Greeks were the first to observe & try to remedy a law which at the time of its making was wise and just but which had become the reverse by reason of the changes in the very nature of things and men. And thus Aristotle is given the honor of being the founder of equity because we know that he was the foremost philosopher of Greece and one whose writings on religion, art, law and natural justice remained foremost in the mind of the public down to the time of Bacon. Besides being the tutor of Alexander, the great, the son of Philip of Macedon, he was able to sow seeds of his ideas of the need of this great reform, in places

where they were afterwards matured and resulted in the establishment of what we now know as Equitable Jurisprudence.

The Romans were the next nation which developed this system of correction which they borrowed from the Greeks. In the praetorian courts of Rome each case was supposed to be decided on its own merits and by the judge's discretion, which in the words of Lord Camden "Is the law of tyrants, it is always different in different men it is always unknown; it is causal, and depends upon the constitution, temper and passion. In the best it is oftentimes capricious, in the worst it is every vice, folly and passion to which human nature is liable," was soon found out, because of the corruption and partiality caused by the increasing wealth of Rome. So in 527 A.D. a commission was appointed to collect all the Roman laws, which was done and embodied into three books, named, the Code, the Pandects and the Institutes. Of these the Code interests us the most because it was composed of all laws, instructions to Judicial officers and of rules of judgement which Cornelius caused the Praetors to inscribe and to adhere to in deciding a case, on account of the corruption & partiality.

Now lets us examine the introduction and development of Equity in Western Europe, especially England which is the source of all our laws and institutions. At first all cases were tried by a national assembly or court and from the judgment of this tribunal the

defeated person might appeal to the king direct. As things progressed the king soon found that he had more than he could attend to. So King Edgar of England made a decree that embodies one of the first and fundamental principles of equity, namely, that no one should appeal to him, who could obtain justice in a law court.

After a time the king allowed the chancellor to decide appeal for him, this man becoming known as the Keeper of the King's conscience. But as the population and intercourse increased and therefore disputes and litigations also increased, it was found necessary to form a supreme court known as the Curia Regis or the King's Court of Justice, which was composed of a number of the Barons with the Chancellor and Chief Justice, chosen from the clergy, as the head. But the inefficiency and ignorance of the nobles and the king and the ambition of the clerical chancellors, who were the learned men of the kingdom, enabled the latter to separate themselves from the King's Council and form a new and distinct jurisdiction. Thus having laid the foundation and being successful, they were encouraged to extend their jurisdiction and soon wrought an entire change in the system of the judiciary. This change brought about the spectacle of a kingdom being governed by two sets of laws, each entirely separate but yet both tending to the same common end, that is to administer justice. This new court which was established soon departed from the original idea, that the original end of equity was

to correct defects arising out of the generality of a law and that each new case should be decided on its own facts and that if these new rules of law were reduced to positive rules the chief and only object of this new court would be annuled.

But not withstanding these opinions the clergy laid down positive rules of law and soon changed their court into a recognized department of the law. This new department rapidly increased its scope & and power for several reasons, 1st. Because of the tendency of the common rules to hardness and rigidity by reason of the deference paid to precedents; 2nd. Refusal of the common law to adopt that part of the Roman law which may be called the equitable as distinguished from that which is merely stricti juris; 3rd. Desire to increase the dignity and importance of the office of chancellor; 4th. While in law a judgment was merely for the plaintiff or defendant, while in equity it is different for although one party may obtain the verdict, still as a condition precedent to the vesting of that verdict, he may be required to render some duty to the defeated party; 5th. The intervention of Uses and Trusts and their corresponding duties created a new field for the equity court or as it became known as the Court of Chancery.

Thus was the condition and situation of the Court of Chancery at the time when the colony of Pennsylvania was established and therefore I will now leave Equity in England and regard its estab-

lishment in Pennsylvania.

After having thus seen a general scheme of the origin of Equity let us inquire into its establishment in the colony of Penn. But to do this we must first note the large and discretionary powers which were given to William Penn by Charles II of England. Considering the fact that Charles was not a believer in religious toleration to any great extent, it was certainly a mark of great esteem and confidence to give Penn the power of establishing courts and laws, and also the appointment of judicial officers, the establishment of towns and the opening of ports of entry, also the supreme military command. Thus making a province supposed to be subject to the crown of England a principality and its proprietor a Palatine instead of Governor.

We know that these great powers were given to Penn by examining the Charter of that colony. By section 6 of that charter, it was declared that the law of England relating to the descent and enjoyment of lands, and the succession and possession of chattels was to be the law of the province until altered by the people's assembly. And in section 5 of the same charter Penn was given the power to appoint judges and establish courts with such powers and forms as should seem to him most convenient. By the two foregoing sections of the charter given to Penn it seems that the introduction and establishment of the chancery courts would follow as a matter of course

the introduction of the common law. But here we find an obstacle in the form of Penn's objection to the various and complicated forms of pleading and defense that are a great part of the procedure in Equity. For Penn knew that his settlers were and would be plian men ant that their previous occupations were not such as would fit them to practice, let alone preside over a court which required so many formalities. Besides the Quakers which formed a major part of his settlers had an unique yet old form of community government to settle disputes. The quarrels and contentions of the Friends were tried by appeal to the meeting of their persuasion, whose decrees were enforced only by the censure and contempt of the society together with the withholding of certain privileges.

This primitive method of government was satisfactory as long as the Quakers were the majority, But the increase of settlers soon caused increased litigation and in 1684 a court of mixed jurisdiction of law and equity was established, the basis of the present mixed system. This court soon failed to give satisfaction so about 1715 laws were passed by the colonial assembly establishing a system of courts, but before this new arrangement could prove satisfactory or not, Queen Anne caused laws to be passed in England which abolished them. Then there came a period of great internal dissatisfaction and quarrels which were never settled because the few courts left, for some reason, refused to interfere, some of the

judges resigning, others refusing to sit, while some died and their successors were never appointed.

So when Sir William Keith ascended the chair of governor of the colony he found great confusion and a danger of the colony going out of existence like many others did at that time and accordingly in 1720 he suggested to the assembly the establishment of a regular court of Chancery. The assembly acceded to his request and he then granted to the court the same power and jurisdiction that the Chancery court in England had. But this new court was not very succesful in its operation and very few cases were tried by it. About the year 1736 the people of the colony obtained an idea, fostered by the unpopularity and overbearance of Keith's successors that it was unjust, so the people of the counties of Philadelphia, Bucks and Chester presented a petition to the Assembly and claimed that the court was unconstitutional as it violated section 6 of the Charter, which provided, that no person should be obliged to answer any complaint whatsoever relating to property before the Governor and Council or in any other place excepting the ordinary court of justice. The Assembly agreed with the people and disbanded the court, declaring it a violation of the above section. After this we find in the writings, of Franklin and other men of that period, references made to a bill calling for the establishment of inferior and superior courts of chancery. This bill passed a few readings but beyond

this nothing more was ever heard of it and as it can not be found in the Statutes we must draw the conclusion that it was defeated on account of the antagonism of the people to it.

Things went along in about the same manner until the Declaration of Independence and the union of the colonies. In 1776 according to instructions from Congress, each state held a convention in order to organize the government of each state on a new and firm basis. In some states under these conventions a distinct court of Chancery was established, as in, New York, New Jersey and Delaware. But in Pennsylvania this plan was not adopted and only a few equity powers were given to the law courts. By section 24 of the proceedings of the convention of Pennsylvania, we find that these powers given to the law courts were in reference 1st. the perpetuation of testimony; 2nd. the obtaining of evidence from places outside of the state; 3rd. the care of persons and property of non compotes, and any other power as may be found necessary by any future assembly, provided these provisions be not inconsistent with the constitution.

The laws passed by this convention soon showed the fact that they were passed at a time of great political excitement and aversion to any form of law or government that seemed to confer any ~~form~~ exclusive power on any court and on account of the inaccuracies and defects of these laws, another convention was called in 1790 to amend them. Among other things declared by this second convention was

that a court of chancery, with all its powers, duties and prerogatives was in the future to be a branch of the judiciary of the Commonwealth and further more the Chief Chancellor, besides his regular court duties, was to sit as the presiding officer of the Senate in all cases of impeachments. Thus the court of chancery in Pennsylvania may be said to date from 1790.

Among the reasons advanced against the establishment of a separate equity court in the early history of Pennsylvania was the evil effects of having two distinct courts whose powers were thought to conflict, this seems but a weak argument and shows the fact that the settlers were not acquainted with the foundation maxim of equity, that Equity will not interfere to grant relief where a remedy exists at law. In other words a court of chancery only begins to exercise its jurisdiction where the jurisdiction of a law court ends. Another barrier was found in the two conflicting sections of the Charter. For while the 5th. section gives to the Assembly the power to vest equity powers in such courts as may be found necessary, the 9th. section limits this power by saying "that the trial by jury shall be as heretofore and the right thereto shall remain inviolate. Thus we see that while one section gives the power to confer equity powers the other forbids or limits these powers as far as the doing away with the trial by jury. And to solve this inconsistency we must resort to the rule of statutory construction, that where two laws

conflict and one is not directly derogatory to the other, we must construe them together and by one and another, so that both may stand. And therefore in applying this method the result would seem to be that an equity court may be established but it must recognize the right to the trial by jury, if demanded and that the Chancellor can not be the exclusive judge of facts as well as of law as he is in England.

Thus having seen the quarrels and dissensions that arose over the establishment of a separate court of chancery, before the Revolution and during its continuance, let us now regard equity in Pennsylvania and its development and scope from that time. Owing to my limited means of finding out the statutes that were passed on the subject, the greater part of the progress of this period must be obtained from the study of the cases decided in Pennsylvania on the various parts of the subject, a tedious and rather unsatisfactory method when not used together with a thorough study of the statutes which is, in this case, impossible.

The first general application, in Pennsylvania, of equitable principles was made not by a separate court of chancery but by the law courts, for in the case of *Jordan vs Cooper*, 3 Sergeant & Rawle 564, a case decided about 1827, the presiding judge says the following, "In England from which our system of jurisprudence is derived and in some of the states of the Union, there are courts of law and

chancery possessing separate and distinct jurisdiction. The Courts of Chancery mitigate the rules of law according to equity principle. The citizens of Pennsylvania have been opposed to the establishment of chancery jurisdiction distinct from the courts of law and have required that in the administration of justice, the strict rules of law should be blended with and mitigated by equitable principles. In Pennsylvania courts of law, have to a certain extent, equity powers. "From this statement we can plainly see that the law courts had both legal and equitable jurisdiction and that the jury applied equitable principles under the direction of the court, in the same manner as legal ones. And that the remedy on a motion for a new trial is the same, was shown in the case in 15 Sargeant & Rawle 118. And in general the courts of Pennsylvania so mould their common law actions as to administer equitable relief where not restrained by form of law. That is where ever it could be done without flagrantly violating some rules of common law. These common law rules were modified and had their sharp and unyielding edges taken off, so as not to be too oppressive in certain cases.

Thus in this uncertain and unsatisfactory manner the courts of Pennsylvania administered relief in many cases according to the principles of equity. But the need of a more stable and definite jurisdiction of equity was recognized and accordingly a committee was appointed to revise the civil code and this committee advised the

conferring of enlarged equity powers on the courts. This idea was carried out in the following year, and statutes were passed conferring definite powers on the Courts of Common Pleas and on the Supreme Courts.

The statutes thus passed are as follows:- The statute of June 16th.1836 conferred on the several courts of the Common Pleas the powers and jurisdiction of a court of chancery so far as relates to 1.The perpetuation of testimony;2.The obtaining of evidence from places not within the state;3.The care of persons and estates of those who are non compos mentis;4.The control, removal and discharge of trustees and the appointment of trustees and the settlement of their accounts; 5.The supervision and control of all other corporations other than those of a municipal character and unincorporated societies and partnerships; 6. The care of trust moneys and properties and other moneys and properties made liable to the control of said courts, and in such other cases as the said courts have heretofore possessed such jurisdiction and powers under the Constitution and By laws of this Commonwealth.

The above statute referred to the said courts in the state at large but the courts of Philadelphia were given additional powers and jurisdiction. Another part of the same statute gave to the courts of Common Pleas of the said city the powers above mentioned besides, 1.Supervision and control of partnerships and corporations

other than municipal corporations; 2.Care of trust moneys and properties and other moneys and properties made liable to the control of said courts; 3.Discovery of facts material to the just determination of issues and other questions arising or depending in the said courts; 4.The determination of rights to property or money claimed by two or more persons, in the hands or possession of a person claiming no right or property therein; 5.The prevention or restraint of the commission or continuance of acts contrary to law & prejudicial to the interests of the community or the rights of individuals; 6.The affording of specific relief where a recovery in damages would be an inadequate relief.

The acts of 13 June 1840, gave to the courts of Common Pleas in the city and county of Philadelphia, jurisdiction on ground of fraud, mistake, accident or account. The scope of this act was further broadened by the act of 16 April 1845, which extended the above jurisdiction to all cases of fraud whether the fraud be actual or constructive. In 1848, by an act passed on the 10 of April of that year, the same courts were given the powers and jurisdiction of chancery courts in all suits where a Bill of Discovery was sought. The act passed June 16th. 1836 which gave to the Common Pleas courts the power of perpetuation of testimony and the like did not extend to where lost records were desired to be perpetuated but an act passed April 25th. 1850, remedied the defect by granting that power

to the courts.

Thus we see that the Common Pleas Courts of Philadelphia had greater powers and jurisdiction long before any of the other courts scattered through the state. But on Feb. 14th. 1857, an act was passed which gave to all the Common Pleas courts in the state the same powers and jurisdiction as the Philadelphia courts had previously exercised. I have given these few acts to show about what the extent of the powers and jurisdiction of the courts of Pennsylvania was, after the attempt to create a regular equity court. Of course scattered through the various years up to 1874, a few additional powers were granted to them but these powers were more or less incidental and explanatory to the exercise of those previously given.

In 1874, when a new constitution was adopted, the Supreme Court among other jurisdictions, was given jurisdiction in cases of injunctions where a corporation was a party defendant. It was also given appellate jurisdiction by appeal of certiorari or writ of error, in all cases as is now or may be provided for. Thus we see that it has about the same jurisdiction in equity as the lower courts with the addition of an injunction, where a corporation is a party defendant. This constitution provided for the courts of Common Pleas by saying, that they were to continue as they were established at that date, 1874, unless they were otherwise directed or changed by law.

Now after having shown the general powers and jurisdiction of the courts of Pennsylvania, I will endeavor to point out a few peculiarities of their legislation as compared to the legislation in other states on equity questions.

Of course the main and fundamental basis or precepts of equity are the same as in any other state, that is to say, the so called maxims of equity are recognized and enforced the same as in any other state, so I will not dwell on them at all.

Let us now proceed to the main division or topic of equity, that is the doctrine of trusts. As a general rule we may say that the word trust has the same significance as in any other state and the same general rules are laid down to govern their establishment and control. Previous to 1856, an express trust could be created by parole but an act passed on the 22nd. of Apr. of that year, prohibited such trusts. It is also a general rule that where a trust is created to give effect to a well defined purpose, the courts must sustain the trust whether the cestui que trust be sui juris or not.

The mode of creating trusts by the use of precatory words has caused a great deal of trouble in Pennsylvania. At first that method of creating estates was denied, although it was admitted that the custom existed in England and some of the other states. They admitted that there was, at first, a reason for such practice in England and else where but they contended that the reason had died a-

way in this country, although the practice was still retained. A case holding the above was decided in 1853, see "In the matter of Penrock's Estate" 20 Pa.St. 268. But the English doctrine was recognized in the case of Burt vs Herro 16 P.F.Smith 400, but that case seemed to indicate that such a method of creating an estate will only be recognized where an unqualified estate is made and the matter is not left to the pleasure and inclination of the trustee.

Another peculiar feature to be noticed is, that although the Statute of Elizabeth introducing the Cy Pres doctrine was said to be adopted with the other laws of England, still the courts at first in the case of Witman vs Lex 17 Sergeant & Rawle 88, rejected the doctrine. But in the latter cases of City of Phila. vs Girard's Heirs 9 Wright 21, the doctrine was introduced to a limited extent.

It is a general rule that the interest of a cestui que trust, what ever it may be, is liable for his debts and it can not be fenced in by limitations, so as to secure to it the inconsistent characteristics of right and enjoyment to the beneficiary and immunity from his creditors. But in Pennsylvania, it is now firmly established by many authorities, that where a gift is made for life, coupled with a proviso exempting the estate of the cestui que trust from liability for his debts and where he is excluded from the control of his property, such proviso will be good without any limitations over upon insolvency. This end may be had not only by exemptions

from the cestui que trust's debts but also that the income shall only be spent for the benefit of the cestui que trust to the extent which the trustee may in his discretion deem advisable for to subject the income so bequeathed to the execution of creditors would end the discretion of the trustee and defeat the end of the testator expressed in the trust instrument.

Another peculiarity of the legislation of Pennsylvania, was the attitude of that state to trusts created for the favor of femme covert. The courts declared that such a women had no power over her separate estate except those given to her by the trust deed and those powers had to be strictly followed.

The rules as to the duties of trustees and their conduct are the same as in any other state, except a trustee is not allowed to invest trust funds in bank stock or in stock of any public corporations. In this respect the state followed the rule adopted by New York and England.

The state departed from the harsh rule of England and the United States, that all the purchase money on a property had to be paid at once or else there was no protection for the vendee, not even if the greater part of such money had been paid, and formulated the rule that a payment of part of purchase money was a protection pro tanto. The state also rejects the English rule that a deposit of the title deeds is a good mortgage. But it holds that open and notorious possession is sufficient notice of unrecorded deeds.

In regards to specific performance not much is to be said, except that the Pennsylvania courts use, very frequently, a common law action of ejectment as a means of compelling a vendor or vendee to fulfill an agreement. This causes the sight of an equity court relying on a common law form to enforce its decrees.

Pennsylvania agrees with New York in allowing a great latitude in regards to the admission of evidence to prove fraud and its remedies are substantially the same as in most states.

As a general rule a chancery court's jurisdiction, in cases of injunctions where a corporation is a party defendant, is given to it by statute and is not regarded as inherent in it but Pennsylvania in given to its Supreme Court original jurisdiction in such a case, seems to intimate that it is an inherent right in courts of chancery instead of being an acquired right.

The divisions of equity that I have not mentioned, such as,, reformation, cancellation, etc., are about the same as in any other state and the rules governing vary so little that I have not considered it worth while to point them out. The main object being to point out the main glaring differences, which at first were numerous but have now disappeared, owing to the desire and aim of the people to have general laws through out the United States on various questions. And having accomplished my object in a very unsatisfactory manner I will draw this work to an end.

